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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-fifth session
Applications Nos. 58, 59 and 60

ADMINISTRATIVE TRIBUNAL JUDGEMENT No. 481: EL SHAMI AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; No. 479: CAINE AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; No. 471: BYFIELD AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS

Report of the Committee

Rapporteur: Mr. Anthony AUST (United Kingdom of Great Britain and Northern Ireland)

INTRODUCTION

1. At its thirty-fifth session, the Committee on Applications for Review of Administrative Tribunal Judgements, established under article 11 of the statute of the Administrative Tribunal, considered the following applications:

(a) Application of Mr. El Shami for review of Administrative Tribunal Judgement No. 481 - El Shami v. the Secretary-General of the United Nations;

(b) Application of Mr. Caine for review of Administrative Tribunal Judgement No. 479 - Caine v. the Secretary-General of the United Nations;

(c) Application of Mr. Byfield for review of Administrative Tribunal Judgement No. 471 - Byfield v. the Secretary-General of the United Nations.

2. Meetings of the Committee were held on 5 and 7 September 1990.

I. COMPOSITION OF THE COMMITTEE AND ORGANIZATION OF THE SESSION

3. The Committee, under paragraph 4 of article 11 of the statute of the Administrative Tribunal, is composed of the member States, the representatives of which have served on the General Committee of the most recent regular session of the General Assembly (forty-fourth session), namely, at this time: Antigua and Barbuda, Austria, Bolivia, Brunei Darussalam, Burkina Faso, China, Congo, Costa Rica, France, Gambia, Iran (Islamic Republic of), Iraq, Kuwait, Luxembourg, Morocco, Nigeria, Norway, Papua New Guinea, Poland, Syrian Arab Republic, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Vanuatu, Venezuela and Zimbabwe.

4. Mr. Thomas Hajnoczi (Austria) and Mr. Anthony Aust (United Kingdom), elected respectively as Chairman and as Rapporteur at the thirty-fourth session, continued to serve in those capacities at the thirty-fifth session.

II. THE APPLICATIONS BEFORE THE COMMITTEE AND THEIR CONSIDERATION

5. On 21 June 1990, the Committee received, through its Secretary, an application from Mr. El Shami requesting a review of Judgement No. 481 rendered by the United Nations Administrative Tribunal on 23 May 1990 in the case El Shami against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 14 August 1990, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.186) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/481).

6. Written comments of the respondent, submitted with respect to the application of Mr. El Shami in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were received by the Secretary of the Committee on 21 August 1990 and thereafter duly circulated to all members of the Committee in document A/AC.86/R.187.

7. The Committee considered the application of Mr. El Shami at its closed meeting held on 5 September 1990.

8. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. El Shami under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 481 delivered by the United Nations Administrative Tribunal in the case of El Shami against the Secretary-General of the United Nations.

9. In connection with the application of Mr. El Shami, an opinion was expressed by one delegate that the Tribunal had not addressed all questions referred to it by the Applicant. A view was also expressed that the provisions of the present statute of the United Nations Administrative Tribunal might need further improvement and that, therefore, the General Assembly may wish to consider reverting to the matter of the review of the statute as envisaged in decision 44/413 adopted by the Assembly at its forty-fourth session on the recommendation of the Fifth Committee.

10. On 12 July 1990, the Committee received, through its Secretary, an application from Mr Caine requesting a review of Judgement No. 479 rendered by the United Nations Administrative Tribunal on 18 May 1989 in the case of Caine against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 15 August 1990, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.188) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/479).

11. Written comments of the Respondent, submitted with respect to the application of Mr. Caine in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were received by the Secretary of the Committee on 21 August 1990 and thereafter duly circulated to all members of the Committee in document A/AC.86/R.189.

12. The Committee considered the application of Mr. Caine at its closed meeting held on 5 September 1990.

13. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Caine under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 479 delivered by the United Nations Administrative Tribunal in the case of Caine against the Secretary-General of the United Nations.

14. On 29 June 1990, the Committee received, through its Secretary, an application from Mr. Byfield requesting a review of Judgement No. 471 rendered by the United Nations Administrative Tribunal on 11 May 1990 in the case of Byfield against the Secretary-General of the United Nations. The application did not comply with the requirements set forth in paragraph 2 of article II of the rules of procedure of the Committee. Therefore, as provided for in paragraph 2 of article III of the rules of procedure of the Committee, on 2 July 1990 the application was returned to Mr. Byfield with a request that it be corrected and resubmitted within three weeks. On 26 July 1990, a corrected application of Mr. Byfield was received by the Secretary of the Committee. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly.

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Thereafter, on 14 August 1990, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.190) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the judgement of the Administrative Tribunal (AT/DEC/471).

15. The written comments of the Respondent, submitted with respect to the application of Mr. Byfield in accordance with paragraph 1 of article IV of the rules of procedure of the Committee, were received by the Secretary of the Committee on 20 August 1990 and thereafter duly circulated to all members of the Committee in document A/AC.86/R.191.

16. The Committee considered the application of Mr. Byfield at its closed meeting held on 5 September 1990.

17. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Byfield under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 471 delivered by the United Nations Administrative Tribunal in the case of Byfield against the Secretary-General of the United Nations.

18. In accordance with article VII, paragraph 4, of the rules of procedure of the Committee, the decisions of the Committee with regard to the applications of Mr. El Shami, Mr. Caine and Mr. Byfield were formally announced by the Chairman at the meeting of the Committee, held in public on 7 September 1990. At that meeting a representative of the Syrian Arab Republic made a statement for the record. The verbatim record of the public meeting of the Committee is contained in document A/AC.86/XXXV/PV.2.